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Federal Communications Commission
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	CC Docket No. 92-90
The Telephone Consumer Protection Act of 1991	)	

REPLY COMMENTS
OF THE
BANC ONE CORPORATION
CALIFORNIA BANKERS CLEARING HOUSE ASSOCIATION
FIRST USA BANK
NEW YORK CLEARING HOUSE ASSOCIATION
QVC NETWORK, INC.
VISA U.S.A., INC.

The Banc One Corporation, California Bankers Clearing House Association, First Bank USA, New York Clearing House Association, QVC Network, Inc., and VISA U.S.A., Inc. (collectively the "Coalition")[1] submit these reply comments addressing the Commission's proposed regulations implementing the Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 (to be codified at 47 U.S.C. § 227) (the "Act").

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List A B C D E

1 A description of each of the Coalition's members is attached as Appendix A.

I. THE COMMISSION'S PROPOSED EXEMPTIONS CORRECTLY REFLECT CONGRESS' INTENT TO PRESERVE LEGITIMATE BUSINESS ACTIVITIES WHILE PROTECTING CONSUMER PRIVACY.

Certain commenters inaccurately contend that the Commission has overstepped its bounds or misconstrued Congressional intent in proposing certain exemptions to the autodial restrictions of the Act.[2] In fact, Congress expressly authorized the Commission to exempt categories of automatically dialed prerecorded voice messages that

> (1) do not adversely affect consumer privacy rights, and
>
> (2) do not include the transmission of any unsolicited advertisement.[3]

At the heart of this exemptive authority is Congress' desire to preserve legitimate telemarketing business activities[4] while proscribing unwarranted automated or prerecorded voice message calls.[5] This intent was echoed by the President

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2 See, e.g., Comments of the Center for the Study of Commercialism, filed May 26, 1992, at 1; Consumer Action's Opening Comments, filed May 22, 1992, at 1; Comments of The National Consumers League, filed May 26, 1992, at 6-8.

3 47 U.S.C. § 227(b)(2)(B)(1991).

4 See 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991) (comments of Rep. Cooper) (Supporting the bill because it addresses privacy concerns "in a balanced way that permits telemarketing to continue its important function of promoting commerce.") and 137 Cong. Rec. H11310 (daily ed. Nov. 26, 1991) (comments of Rep. Markey) ("[T]he aim of this legislation is not to eliminate the brave new world of telemarketing...").

5 See S. Rep. No. 178, 102nd Cong., 1st Sess. 1 (1991), reprinted in 1991 U.S.C.C.A.N. 1968 ("The purposes of the bill are to protect the privacy interests of residential
(Footnote 5 Continued)

when he signed the bill into law.[6] Thus, the National Consumers League's claim that "the Notice of Proposed Rulemaking issued by the Commission does not fulfill the intent of Congress" is simply not correct.[7]

As we noted in our initial comments,[8] the Commission in the Notice of Proposed Rulemaking ("NPRM") appropriately balanced consumer privacy rights and the legitimate needs of the business community in exempting calls to former and existing clientele and non-solicitation commercial calls.[9]

In particular, the Coalition agrees with many other commenters that there is a critical need for exemptions to

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(Footnote 5 Continued)
telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home.").

6 Statement by President George Bush Upon Signing S.1462, 27 WEEKLY COMP. PRES. DOC. 1877 (Dec. 20, 1991) reprinted in 1991 U.S.C.C.A.N. 1979.

7 Comments of The National Consumers League at 7.

8 Comments of the Banc One Corporation, California Bankers Clearing House Association, First USA Bank, New York Clearing House Association, QVC Network, Inc., and VISA U.S.A., Inc., filed May 26, 1991, ("Coalition Comments") at 2.

9 Beneficial non-solicitation calls include fraud detection calls made by credit card companies to check that new and replacement credit cards reached customers. See Comment of Digital Systems International, Inc., filed May 26, 1992, at 4; Fraud Prevention Meets Customer Service at Chase, Bank Technology News, May 1992, at 27. Attached as Appendix B.

protect debt collection calls.[10] Indeed, Congress clearly envisioned an exemption for such calls. Commenting on the exemptions section of the Act, Rep. Markey stressed that it was designed to protect less intrusive uses of telemarketing such as "leav[ing] messages with consumers to call a debt collection agency to discuss their student loan."[11] The House Committee report notes that: "[t]he definition of a 'telephone solicitation' is in no way intended to include calls to collect debts or to follow up on billing a subscriber for some service, purchase or other transaction."[12] It also states that the Committee did not intend to restrict "normal, expected or desired communications between businesses and their customers" and included a creditor advising a customer of an unpaid bill as an example of a desirable call.[13]

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10 See, e.g. Comments of The Consumer Bankers Association, filed May 26, 1992, at 2-3; Comments of Teknekron Infoswitch Corporation, filed May 22, 1991, at 2-3; Comments of Household International, filed May 26, 1992, at 5-7; Comments of Gannett Co., Inc., filed May 26, 1992, at 3-4; Comments of American Financial Services Association, filed May 26, 1992, at 5-6; Comments of Wells Fargo Bank, filed May 26, 1992, at 1; Comments of American Bankers Association, filed May 26, 1992, at 3; Comments of National Retail Federation, filed May 26, 1992, at 5-6; Comments of Citicorp, filed May 26, 1992, at 2-3.

11 137 Cong. Rec. H11310 (daily ed. Nov. 26, 1991).

12 H.R. Rep. No. 317, 102nd Cong., 1st Sess. 16 (1991).

13 H.R. Rep. No. 317 at 17 (1991).

Debt collection calls have enormous value to consumers and the business community. Such calls can help resolve debt issues quickly, thereby protecting consumers from repossession or the loss of credit or future services. The Coalition urges the Commission to insure that these normal, expected and desirable debt collection calls are exempted as proposed in the NPRM. Moreover, should the Commission decide against the more general exemptions that currently encompass debt collection activities, it should create an explicit exemption for debt collection calls.

II. AUTODIALED, PRERECORDED DEBT COLLECTION MESSAGES ARE AMONG THE LEAST INTRUSIVE MEANS OF COLLECTING UNPAID BILLS.

One of the commenters opposing an exemption for debt collection calls wrongly contends that debtors who receive prerecorded calls are suffering a terrible intrusion or that "allowing auto dialers to be used for debt collection purposes will increase the potential for harassment."[14] In truth, automatically dialed prerecorded debt collection telephone calls are already among the least intrusive, most amicable means of notifying debtors of unpaid bills.[15] Telephone debt collection reminders not

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14 See Consumer Action's Opening Comments, at 1 and 7-8.

15 As discussed in the initial comments of the Coalition, the vast majority of debt collection calls are switched to a live operator once the party has picked up the phone. Prerecorded messages may be used to advise the party to hold for a live operator or to leave a message when the called party is not home. See Coalition Comments at 9.

only save creditors time and money, but also save consumers needless embarrassment or loss of credit.

As numerous commenters noted, automatically dialed prerecorded telephone calling has become an efficient mainstay in the debt collection industry.[16] Absent this cost-saving tool, many companies might have to reconsider their lending policies or increase prices to cover the higher transaction costs associated with collections efforts. They might also be forced to foreclose or take other formal legal action against the debtor sooner than they do now. The slight imposition of a telephone call reminding a customer of an overdue bill is a far more attractive alternative from the customer's perspective than, for example, trying to make a purchase at a store and learning then that a credit card has been cancelled or credit curtailed.

In addition, debtors already are protected against unscrupulous debt collection practices under existing federal and state consumer protection laws. The Federal Fair Debt Collection Act, 15 U.S.C. § 1692 (1988), contains such consumer protections. Several states also have similar provisions.[17] Given the broad scope of these consumer

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16 See, e.g., Comments of The Consumer Bankers Association at 2; Comment of Digital Systems International, Inc., at 2; and Comments of National Retail Federation, at 6.

17 The Robbins-Rosenthal Fair Debt Collection Practices Act, CAL CIV. CODE § § 1788-1788.32 (West 1985 and Supp.
(Footnote 17 Continued)

protection laws, the Commission need not further restrict debt collection calls under the Act.

III. COMMENTERS OVERWHELMINGLY SUPPORT COMPANY SPECIFIC "DO NOT CALL" LISTS FOR SOLICITATION PURPOSES.

If the Commission chooses to regulate live telephone solicitations, the Coalition agrees with the overwhelming majority of commenters that company specific "do not call" lists are the most efficient and practical approach, providing consumers with the freedom to select among potentially desirable solicitations.[18] Several commenters suggested realistic ways the Commission can police the company specific "do not call" lists.[19] The Coalition agrees with their proposals to require telemarketers to have written "do not call" list policies

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(Footnote 17 Continued)
1992); The Consumer Collection Practices Act, FLA. STAT. ANN. § § 559.55-559.78 (West 1988); and The Debt Collection Act, TEX. REV. CIV. STAT. ANN. article 5069-11.01-11.11 (West 1987 and Supp. 1992).

18 See, e.g., Comments of Electronic Information Systems, Inc., filed May 18, 1992, at 3; Comments of MBNA America Bank, N.A., filed May 26, 1992, at 3-4; Comments of Teknekron Infoswitch Corporation at 4; Comments of Household International at 14-15; Comments of Bell Atlantic, filed May 26, 1992, at 4-5; Comments of Citicorp at 23-27; Comments of National Retail Federation at 10-11; Comments of JCPenney Company, filed May 26, 1992, at 15-20; Comments of Gannett Co., Inc. at 5-7; AT&T Comments, filed May 26, 1992, at 6-10.

19 See, e.g., Initial Comments of American Express Company, filed May 26, 1992, at 9-10; Comments of Citicorp at 25-28; Comments of National Retail Federation at 10-11; AT&T Comments at 9-10.

and to notify customers and train personnel in the details of such policies. The Coalition also agrees that names should be placed on the "do-not-call" list within a reasonable period of time after the request. Finally, we agree that proof that these rules were followed should be prima facie evidence of compliance with the Commission's regulations.

Certain commenters inaccurately contend that enforcement needs "require[] that the FCC respect Congress' intent and create a National "Do Not Call" Database."[20] As noted above, a company specific system can be enforceable. Moreover, Congress did not require the Commission to adopt a national database. Several legislators in fact voiced opposition to the national database plan. Rep. Cooper stated: "I think the company-specific do-not-call approach offers consumers greater choice." [21] And Rep. Richardson added: "It is my personal opinion that the creation of a giant national database containing the names of people who do not wish to receive telemarketing calls is not the best way to go. This proposal is extremely problematic and may cause more harm than good."[22]

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20 Comments of Privacy Times, filed May 26, 1992, at 1. Also argued in Comments of The National Consumers League at 17.

21 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991).

22 137 Cong. Rec. H1131415 (daily ed. Nov. 26, 1991).

The Coalition agrees with commenters that the national database would be "operationally difficult and costly to implement,"[23] and "unrealistic [in its] ability to deter unwanted calls."[24] Further, it "would prevent telemarketers from reaching willing recipients and thereby would restrict consumer choice."[25] In short, the national database favored by a few commenters[26] would not be in the public interest and, indeed, may well be dissatisfying to many of the very consumers on whose behalf the national database supporters purport to speak.

CONCLUSION

For the reasons set forth herein and in the Coalition's initial comments, the Coalition supports the Commission's proposed regulations, which provide exemptions for calls to existing and former clientele and commercial non-solicitation calls, including most particularly calls for debt collection purposes. The Coalition urges the Commission to refrain from regulating live solicitations.

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23 Comments of Citicorp at 28.

24 Comments of Gannett Co., Inc. at 6.

25 AT&T Comments at 11-12.

26 See, e.g., Consumer Action's Opening Comments at 2; Comments of Privacy Times at 1-3; Comments of The National Consumers League at 15-17. Note that in its comments, The National Consumers League states at 13-14 that most consumer groups do not have the resources to do a rigorous technical analysis of the live calling regulation alternatives.

If the Commission determines to regulate such solicitations, then the Coalition recommends adoption of company specific "do not call" lists as the best of the alternatives set forth in the NPRM.

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Date: June 25, 1992

APPENDIX A

DESCRIPTION OF COALITION MEMBERS

BANC ONE CORPORATION is a bank holding company headquartered in Columbus, Ohio, with assets of $48.7 billion. BANC ONE CORPORATION currently operates 57 banking institutions with 869 offices in Indiana, Illinois, Kentucky, Michigan, Ohio, Texas and Wisconsin. BANC ONE CORPORATION also operates over 100 other corporations, which engage primarily in data processing, venture capital, investment and merchant banking, trust, brokerage, equipment leasing, mortgage banking, consumer finance and insurance.

The CBCHA and the NYCHA are associations of major banks. They serve primarily as clearinghouses through which members settle accounts and present checks and other payment instruments, and as representatives of their members on issues of common concern.1/ The CBCHA's members include seven of the largest banks in California,2/ and the NYCHA's members include eleven of the leading banks in New York.3/ Together, the members of CBCHA and the NYCHA include nine of the largest banks in the United States. Their combined

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1/ The NYCHA operates two electronic payment systems, the New York Automated Clearing House ("NYACH") and the Clearing House Interbank Payments System ("CHIPS"). The NYACH handles substantial volumes of preauthorized debits and credits, e.g., Social Security checks, insurance premium payments, and direct payroll deposits and serves depository institutions in the Second Federal Reserve District (i.e., New York State and Northern New Jersey). CHIPS provides the means for about 125 foreign and American banks to exchange dollar payments electronically.

2/ The Bank of American National Trust and Savings Association, Wells Fargo Bank, N.A., First Interstate Bank of California, Union Bank, Sanwa Bank California, Bank of California, N.A., and City National Bank.

3/ The Bank of New York, The Chase Manhattan Bank, N.A., Citibank, N.A., Chemical Bank, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Marine Midland Bank, N.A., United States Trust Company of New York, National Westminster Bank USA, European American Bank and Republic National Bank of New York.

assets exceed $600 billion, and their annual communications bills approach $1 billion.

VISA is an association of over 17,500 member financial institutions throughout the United States that are licensed to use VISA's service marks in connection with payment systems (including debit and credit card), check authorizations, and automated teller machine ("ATM") services. VISA is affiliated with VISA International, an association of over 19,000 financial institutions in over 160 countries. VISA member institutions have issued 135.6 million cards in the United States. VISA cards are accepted at over nine million merchant outlets worldwide, including 83% of the retail establishments in the United States. Its cards are used over 3.5 billion times each year.

First USA is a credit card bank located in Wilmington, Delaware, which issues VISA and MasterCard products to customers nationwide. First USA currently has approximately $2.2 billion in loans outstanding and has issued about 3 million credit cards. As a credit card bank, a large proportion of First USA's operations are devoted to telemarketing or collection related activities.

QVC Network, Inc. is a retailing organization that markets a wide variety of consumer products directly to the public through its nationally televised shopping network. The QVC program is produced live and broadcasts continuously to more than 42 million homes by cable and more than 3 million homes by satellite.

APPENDIX B

BANK TECHNOLOGY NEWS

Fraud Prevention Meets Customer Service At Chase

Most credit card operations use predictive dialing for collection purposes, and Chase Manhattan Bank is no exception. But when the bank also turned to the systems for fraud prevention, it found an added bonus in customer service.

Combatting bogus bills

Chase's anti-fraud effort targets the interception and use of new or reissued cards by unauthorized users. Cards are sent out but never received by the authorized card holder. Instead, the cards fall into the hands of people who run up large bills. Ordinarily, the bank doesn't discover the fraudulent use until after the first statement is sent and the authorized user disputes the charges. "Never-received fraud is one of the biggest problems we have," says Ben Hernandez, assistant treasurer at Chase's Garden City, NY, credit card processing center.

In December 1990, Chase initiated a new program to combat this type of fraud. Using a predictive dialing system, the bank calls card holders the first time their new or reissued card is used. "Within 24-hours of their first charge, we give them a call. If they didn't make the charge, we put an immediate hold on the card," explains Hernandez.

In the first month of operation, the program identified 56 cases of fraud and avoided about $80,000 in potential losses. In 1991, the bank avoided over $1 million in never-received fraud, Hernandez reports.

Daily downloads

Here's how the system works: The calling group downloads from the bank's host computer the list of first charges to new or reissued cards daily into the predictive dialing system from Digital Systems. There are, however, too many names for the group to call, so the managers select which names to call first and set up the day's calling job using the list management facilities of the predictive dialing system.

The selection of who to call is based on several criteria, Hernandez explains. Factors which combine to trigger a call include whether the first charge is made in a state different from where the card holder lives, if the charge comes from areas and merchants the bank has identified as high risk, and if there is a large credit line at risk.

"We use a scorecard to prioritize the information in the file. Everyone doesn't get a call, although that is our goal," says Hernandez.

The call itself sounds like a customer service call. Operators tell the card holders they are calling to confirm receipt of the card and verify charges. They offer to assist if the card holder has any service problems or questions. "The response to the calls is very positive. People tell us they have never received calls like this before," Hernandez reports.

Slow pacing

The group uses 15 operators at peak times and the system supports 48 outbound lines. The call pacing has been deliberately set slow, resulting in operators waiting 20 to 30 seconds between calls to insure that no card holder is put on hold.

The Digital System predictive dialer gives the operators enough information on the screen to handle most questions that are asked. If more information is needed, the operators can hit a key and be connected with the host. If the operators for some reason can't resolve a card holder's problem, they then transfer the card holder to a priority queue in the particular department.

Prior to the arrival of the predictive dialer, the never-received fraud group attempted to do the job manually. "We had stacks of reports. It was very difficult to decide who to call. We had no effect on fraud," Hernandez recalls. The predictive dialing system, however, allows the bank to effectively manage and prioritze the calling lists and improves the productivity of the operators 300 to 400 percent, he reports. The result: "We can put a big dent in fraud," he says.

CERTIFICATE OF SERVICE

I, Mary O'Connell, do hereby certify that true and correct copies of the foregoing documents were served this 25th day of June, 1992 by hand delivery to the persons below:

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